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ALEXANDER L. STEVAS,
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No. 82-1711

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

THE STATE OF COLORADO,

PETITIONER,

v.

FIDEL QUINTERO,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF COLORADO

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED APRIL 20, 1983
CERTIORARI GRANTED JUNE 27, 1983

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Note: A copy of the pertinent opinion of the Colorado Supreme Court, People v. Quintero, 657 P.2d 948 (Colo. 1983), was appended as Exhibit A to the petition for certiorari. As permitted by Rule 30.1, the opinion is not reproduced again in the joint appendix.

(1)

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RELEVANT DOCKET ENTRIES

DATE

PROCEEDINGS

10-2-81 1) INFORMATION - one count of

DATE

PROCEEDINGS

second degree burglary, §18-4-203, C.R.S. 1973, charging that "FIDEL QUINTERO, did unlawfully, feloniously and knowingly break an entrance into and enter and remain unlawfully in the dwelling of DAVID and CAROL ROGERS, located at 791 S. Vine Street, with the intent to commit therein the crime of Theft; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the People of the State of Colorado."

11-17-81 2) ARRAIGNMENT before
District Judge Raymond Dean Jones.
Plea of Not Guilty

11-25-81 20) Motion to Suppress Search
of September 29, 1981

2-8-82 22) MINUTES OF PROCEEDINGS

before District Judge Raymond Dean
Jones - Suppression hearing begins

3-29-82 31) MINUTES OF PROCEEDINGS

before District Judge Raymond Dean
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4-7-82 34) NOTICE OF INTERLOCUTORY
APPEAL

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Pertinent Portions of the Transcript of
the Suppression Hearing

DISTRICT COURT, DENVER COUNTY, COLORADO
Case No. 81CR2157, Courtroom 16

REPORTER'S TRANSCRIPT

THE PEOPLE OF THE STATE OF COLORADO,
Plaintiff,

v.

FIDEL QUINTERO,
Defendant.

This matter came on for hearing on
Monday, February 8, 1982, before the
HONORABLE RAYMOND DEAN JONES, Judge of
the District Court.

FOR THE PLAINTIFF: DAVID HECKENBACH,
Deputy District
Attorney

FOR THE DEFENDANT: DAVID VELA and
FREDRICO ALVAREZ,
Attorneys at Law

[Prefatory Note: The parties have agreed, as allowed by Rule 30.2, that the portions of the transcript of the suppression hearing reproduced verbatim in this joint appendix comprise all the testimony relevant to the issue presented for determination by the Court.]

DARLENE BERGAN

called as a witness in behalf of the People, first being duly sworn, testified upon her oath as follows:

DIRECT EXAMINATION

BY MR. HECKENBACH:

Q Ma'am, would you please state your full name and then spell your last name for the record?

A Darlene Bergan, B-e-r-g-a-n.

[12] Q What I would like to do is ask you to remove the microphone from its holder and just pull it up towards you, and it should slide out, if you could hold it just like a finger holds the microphone and everything.

Ms. Bergan, where do you reside?

A 691 South Vine.

Q How long have you lived there?

A Approximately three and a half years.

Q And who do you live there with?

A My husband and son.

Q And how old is your son?

A Twelve months.

THE COURT: Since it's to the Court, I'll just inquire, is there a question here as to location? Was the testimony that the residence was 691 South Vine?


MR. HECKENBACH: Yes, Your Honor. This is a neighbor of the victims.

THE COURT: Very well.

MR. HECKENBACH: This is not the -- she does not reside at the address of the victims.

THE COURT: Very well. You may proceed, sir.

MR. HECKENBACH: All right. Thank you.



Q (By Mr. Heckenbach) Ms. Bergan, I would like to direct your attention to September 29, 1981. Were you at home on or during the daylight hours of that day?

[13] A Yes, I was.

Q Was that unusual for you to be home during the day at that period of time?

A No, I'm home with my son.

Q Your son would have been about what?

A Seven, seven and a half months.

Q Seven months or so?

A (Witness nodded her head.)

Q Do you recall observing, say, about 12:45 in the afternoon, observing anything that struck you as unusual?

A Yes. I was out on the front porch sweeping and I saw a gentleman at the corner, right at the corner of Exposition and South Vine.

Q All right, just a second. How far is Exposition and South Vine from your house?

A I live right on the corner.

Q Okay.

A I saw him cross Vine.

Q Directly across from you?

A Yes.

Q All right.

A And he walked north up the street and he looked at me and then went back to his walking, and he walked up to the third house from the corner and went up on the porch and stood at the front door for probably twenty seconds. It's [14] hard to say. And then he went to the front window and stood there for approximately the same amount of time.

Q Which way was he facing when he stood at the window?
stood at the window.

A Facing the door and also the window.

Q Okay.

A Then he went back to the front door, stood there momentarily, then he left the porch and proceeded up the street north and looked at the side of the house.

Q Of the same house?

A Of the same house, right.

Q Okay.

A At that point in time, I thought he was acting a little strange, and I went in the house and started observing him from the northwest bedroom in our house. And I watched him proceed up the street north again, and he got about -- oh, midway up the block and then crossed over diagonally, and then he stepped out of my view then.

Q At any time before you went into the house, did this person look at you or look in your direction?

A He did when he started walking up the street initially, when he was -- when I first noticed him almost at the corner, he looked over at me and then, I don't recall him looking at me again.

Q Is the individual that you saw across the street [15] looking at you, looking at the house, is he in the courtroom today?

A Yes, he is.

Q All right. For the record, I would like you to point out where he is seated and what he is wearing.

A He is seated right here, and he is in a green shirt and green slacks.

Q Okay.

MR. HECKENBACH: Your Honor, may the record reflect the identification of the Defendant, Fidel Quintero?

THE COURT: Yes, the record will so reflect.

MR. HECKENBACH: Thank you.

Q (By Mr. Heckenbach) Now, when you first observed this, you know, about what time was it when you first observed him?

A Around quarter of one, about 12:45.

Q About quarter to one?

A Yeah.

Q At any time later that day, did you see him again?

A Yes, I saw him about 1:45, and he was standing at the bus stop and he had taken off his shirt and had it thrown over what looked to be a television set -- what was a television set.

[16] Q Okay. What I would like you to do is to approach that diagram, and I think the microphone will reach, and if you could just draw a rough sketch of the position of your house, the position of the house that you saw the Defendant standing in front of, and where the bus stop is in relation to both.

✓ (Whereupon, People's Exhibit A was marked for purposes of identification.)

THE WITNESS: Okay. This is my house.

THE COURT: Ma'am, will you stand just a little further over?

THE WITNESS: How is that?

THE COURT: Okay.

Q (by Mr. Heckenbach) Would you now -- this is one thing we have to keep in mind, is that later on when the record is read back, we need to have what you have pointed out as your house marked in some way, so why don't you put in "M" for "My" in the box you have indicated as your house.

Okay. Thank you.

A This is my house right on the corner, and here's the bus stop, which was directly in front of my front door. This is the third house from the corner, which is where I saw him go up on the porch and stand there for a while.

Q Do you know the address of that house?

A No, I don't.

[17] Q Would you put a "3" in it to indicate third house from the corner, and that would be across the street from your house; right?

A Right.

Q Okay. And after you saw him -- now, which direction is north?

A This way (indicating).

Q Okay. And you have marked that with an arrow with an "N" over it?

You saw him walk north, after the house?

A Yes.

Q Now, where was he? Which side? I take it you marked that one street as Exposition?

A Right.

Q Which side of Exposition is the bus stop?

A It's on my side, which would be the north side of -- north side of Exposition.

Q How far did you observe him from the inside of your house?

A You mean --

Q Looking out a window.

A When are you saying? I mean --

Q Sorry. When he was at the bus stop.

[18] A Yes, I was in the house.

Q How far was it, about, from the window that you looked out to where he was standing at the bus stop?

A Maybe about 15 feet.

Q And what do you recall he was wearing -- I'm sorry. You can have your seat now.

When you first saw him across the street, do you recall what he was wearing?

A Yes. He had a pair of kind of a beige pair of pants on and a cream-colored shirt, short-sleeved.

Q And when you saw him at the bus stop, what was he wearing?

A He had on slacks and he had the shirt off, but he had like an old-man undershirt.

Q Like a sleeveless type?

A Well, yeah, but the short-sleeved shirt was thrown over the television.

Q Thrown over the TV. How big was the TV?

A Probably about a 19-inch.

Q Okay. Now, after you saw that, did you call the police?

A Yes.

Q All right. And do you know what time you called the police?

A Approximately 1:25, as soon as I spotted him.

[19] Q How do you remember that it was 1:45?[sic]

A Well, because he was waiting to catch the bus and I was thinking he is going to catch the bus and the police will not have arrived. So, I had kept on watching the clock, frantically watching for the bus, thinking it was going to show up, and it was 1:30 when the police showed up.

Q Was the Defendant doing anything besides standing there?

A Yeah, you could tell he was a little antsey about the bus coming. So, he walked out in the middle of the street and looked down from where the bus should be coming from, and tried thumbing a ride, hitchhiking and just a little anxious it seemed.

Q Did you see him with the television set prior to his standing at the bus stop?

A No.

Q Okay. Was there anyone else standing at the bus stop?

A No.

Q Had you ever seen the Defendant before?

A Never.

Q Never seen him in your neighborhood?

A Never.

Q You said the police got there five minutes after you called him?

[20] A Right.

Q Okay. And did you watch what the police did when they came?

A Yes, I did.

Q What did you observe?

A Well, the officer approached him and asked him his name.

Q You could hear this?

A Yes.

Q Okay.

A It was hot out, so the doors and windows were open.

Q Okay.

A Asked his name, and I could not hear his response. And then, I think -- I'm not sure what transpired there, but then the officer took some things out of his pockets, like a pair of gloves.

Q Out of whose pocket?

A Out of Mr. Quintero's.

Q When you say that the officer took a pair of gloves --

MR. VELA: Your Honor, I don't think she said gloves.

THE WITNESS: I did.

MR. VELA: I'm sorry.

[21] THE COURT: Would you continue, sir?

Q (By Mr. Heckenbach) When the officer took the gloves out of the back pocket, could you see the gloves before the officer reached in? Were they

hanging out or all the way out of the back pocket?

A I don't remember that.

Q But you did recall seeing a pair of gloves?

A Yes.

Q Taken by the officer?

A Yes.

Q What kind of day was this?

A Extremely warm out. I would say it's in the 80's.

Q I would like to go back to when you phoned the police, and do you recall where you called the police and what number you reached or what location you were trying to reach?

A I called the central dispatcher. It's some downtown number.

Q Okay.

A I'm not even sure of the number now, but --

Q What did you tell the police when you called them?

A I told them that there was an individual standing at the bus stop with a television, that I had seen in the neighborhood [22] earlier. They asked me if I had seen him in the neighborhood before, and I said no. They did not ask my name and -- let's see, what else. I'm not sure whether they asked for a description at that time or not. I was almost frantic, so --

Q Did you --

A They asked me for my location, obviously.

Q Sure. What did you tell them about -- if anything, about seeing him in the neighborhood before?

* * * *

[23] A I said I had never seen the man in the neighborhood, up until that day.

Q Did you tell the police you had seen him earlier?

A I'm not really sure whether that entered into it.

[24] Q Okay. How far away from the TV set was the Defendant standing most of the time while --

A He was standing right next to it.

Q Next to it? And how much of the TV set did the shirt cover?

A Well, it was thrown over the top, so it definitely covered all of the top. I'm not sure whether it covered the sides or not.

Q But could you still tell it was a TV set?

A Oh, yes.

Q Earlier, when you saw him at 12:45, did he have a TV set?

A No, he didn't.

* * * *

[25] (Whereupon, People's Exhibit A was admitted into evidence.)

THE COURT: I do just have a brief voir dire for the Court's own understanding.

EXAMINATION

BY THE COURT:

Q Ma'am, the house that is represented by "M," what is the address?

A 691 South Vine.

Q All right. And what is the address of the house marked "3"?

A I don't know.

Q Okay.

[26] A All I know is it's the third house from the corner.

Q The third house north of Exposition on Vine?

A Right, on the east side of the street.

Q All right. And is yours the first house north of Exposition?

A Right.

* * * *

[Cross-examination of witness Bergan omitted.]

* * * *

[38] ROMASB FREEMAN

called as a witness in behalf of the People, first being duly sworn, testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. HECKENBACH:

Q Sir, would you please state your full name and spell your last name for the record?

A Romasb, R-o-m-a-s-b, Freeman, F-r-e-e-m-a-n.

Q Thank you. How are you employed, sir?

A Denver Police Department.

Q And how long have you been with the Denver Police Department?

A 21 years.

[39] Q What is your current assignment?

A Juvenile detective, Juvenile Division.

Q And what was your assignment back on September 29th, 1981?

A I was assigned to Patrol Division, District 3.

Q And on that 29th day of September, 1981, did you have occasion to respond to the approximate location of Vine and Exposition?

A Yes, sir, I did.

Q Okay. Do you recall about what time it was that you responded to that location?

A It was in the afternoon. I would have to look at the notes, but I think

it was somewhere around -- it was in the afternoon.

Q Okay. That's all right. Why did you respond to that location, sir?

A I was in the District 3 police substation when the clerk, Officer Ortiz, received a phone call stating that there was a possible burglary.

* * * *

[41] Q (By Mr. Heckenbach) Would you tell us what Officer Ortiz told you while you were at the substation?

A He related to me that he received a phone call and that there was a possible burglary suspect in the vicinity of Vine and Exposition. I went and got in my police car and drove to that location.

Q All right. Before going on, did he tell you anything else about anything about the individual?

A Yes. He says there was a man standing on the corner with a T-shirt on

at the bus stop, with a TV at his feet with a shirt over it.

Q Okay.

A As I responded to that location, I observed a man standing at the bus stop, and it was in the northwest corner on Exposition and Vine.

Q Is this individual that you saw standing at the bus stop, in the courtroom today?

A Yes, sir, he is.

Q All right. For the record, would you please identify where he is seated and what he is wearing?

A He is at the Defendant's table, wearing the green shirt.

[42] Q Thank you. From which direction did you come to that intersection?

A I think I come right down Vine Street from the 1600 block south of University.

Q So, you came north on Vine?

A Right.

Q To Exposition?

A Right.

Q Okay. And what did you observe when you first saw the Defendant?

A He was standing there at the bus stop, which he was standing right behind with the TV set in front of him, with a shirt draped over the set as if it was just thrown over the TV set and he had to be waiting for a bus.

Q And was there anyone else standing at that bus stop?

A There was no one else in the neighborhood. The neighborhood was vacant of any pedestrians.

Q What kind of weather was it that day?

A It was clear, in about the 80's. 80 degrees or above. It was quite warm.

Q Now, after you saw the Defendant standing there, what did you do?

[43] A I pulled up and stopped, to where I had him in my vision, got out of the car, asked him for identification.

Q What was his response?

A He told me he had no identification, and he spoke in very broken English and told me his name; Fidel Quintero.

Q But he could not produce any identification?

A No. He told me he had no identification.

Q Now, after he told you he had no identification, what did you next do?

A I told Mr. Quintero that -- no, first of all, I asked him where he had gotten the TV set, where was he coming from with the TV set.

Q What was his response?

A He told me that he had boughten [sic] the TV from a person within the neighborhood for \$100, and he was trying to go home with it.

Q Did he indicate where he lived?

A No. Like I say, he spoke very broken English and I got his name, and about that time, then I started getting cover in from other police officers.

Q At the time that you asked him where he got the TV set, did you have handcuffs on him?

A No.

Q Okay.

[44] Was he under arrest?

A Not at that moment.

Q Had you informed him he was under arrest?

A Not at that moment.

Q And why did you not arrest him?

A Well, at that time I didn't feel I had probable cause to arrest him for anything.

Q Okay. And why is it that at that time you felt you did not have probable cause?

A Because -- well, because I didn't know where the information was coming from that we had received from the District 3 station that he was possibly a burglar. He was just a man in the street with a TV set.

Q Did you subsequently, or at some point in time, come into contact with Darlene Bergan?

A Yeah. Sergeant King responded about that time, also a Detective Wessels and Comstock came on the scene. I was -- I told Detective -- Sergeant King, I didn't know where the information had come from, and the witness, being right -- the house here,

her front door was approximately 25 feet away, overhearing me asking where the information came from, she made herself known.

Q Did you speak to her?

A Yes, sir. I spoke to her and she wrote a [45] statement out for me.

Q Do you recall what the substance of that statement was?

A She told me she had observed the Defendant in the area earlier and he was walking, having no property on him, that he had went to a house on Vine Street there in the 600 block south and knocked to the door, and then he had went to another house and she lost sight of him. And in a short time later she observed him walking down the street with a TV set, placed the TV set there at the bus stop, waiting for the bus. Meanwhile, he was trying to hitchhike also while he was waiting for a bus.

Q Detective, do you recall whether the -- do you recall when, at what point, the Defendant was placed under arrest?

A Shortly right -- when Sergeant King drove up and then the lady made herself known, then I placed him under arrest and put the handcuffs on him.

Q Are you the one that handcuffed him?

A Yes. I placed him in the police car.

Q Did you inform him he was under arrest?

A I informed him he was under arrest, and verbally gave him his rights.

Q Okay. Was that before or after you spoke with [46] Ms. Bergan?

A That was at the time Ms. Bergan made herself known, that she was the person that had called the police. Then, I placed him under arrest.

Q What information did she provide you before you placed him under arrest?

A She had provided me no information at that point.

Q At that point, she had just said she was the one?

A Yes.

Q Okay. Now, did you conduct a search of the Defendant or --

A I gave him a pat-down search.

Q At what point in time was this?

A Just right after I handcuffed him.

Q Okay. And did you discover anything as a result of the pat-down search?

A I found a pair of brown woolen gloves in his right-rear pocket.

Q And did you conduct a search incident to arrest, or did someone else? Do you know?

A No, I didn't search him until after I had placed him under arrest.

[47] Q Did you recover anything else besides the gloves? You, yourself?

A The TV set.

Q Okay. And anything from his person?

A I didn't take no property from his person, other than the gloves.

Q Other than the gloves? Could you -- were the gloves visible, or were they stuck all the way down in his pocket, or were they partially hanging out?

A I didn't even notice the gloves until I patted him down and there was a big lump in his back pocket, and I pulled the gloves out.

Q Okay. You say the shirt was draped over the TV set; correct?

A More or less just thrown over the TV set.

Q Was it spread out or was it kind of like -- how would you describe it

falling over the TV set, the way it hung on the TV?

A It would be -- looked as if a person just threw it over. It wasn't in a straight line, it was kind of spread out.

Q Was there anything underneath the shirt besides the TV?

[48] A There was another -- I think it was a video tape game.

Q Was that visible without removing the shirt, or would you have had to remove the shirt before that would be visible?

A Well, I was watching the Defendant more than anything else at that time, and I was just noticing the TV set because it was big and large, but I was watching him more than the property that was on the ground beside him.

Q You don't know?

A I didn't pay any attention to the video game set until after he was placed under arrest. Then I noticed there was another object on top of the TV.

Q Did you transport the Defendant, or did you -- someone else?

A No, we placed the Defendant in the detective's vehicle, and also the TV in it, and the video set was placed in this car also.

Q Did you give the gloves to the detective?

A Yes.

* * * *

CROSS-EXAMINATION

* * * *

[57] Q Okay. Now, as I recall your testimony, Officer, again on direct examination, she made herself known, and at that point in time you told Mr. Quintero -- advised him he was under arrest, he was handcuffed, placed in the

car, and then Officer -- or yourself, went over and interviewed Ms. Bergan?

A Right. I interviewed -- excuse me. I interviewed her after I had placed him in handcuffs and placed him in the car.

Q I assume before you put handcuffs on somebody, [58] that's when you pat them down?

A Yes.

Q That's when you removed the gloves from his back pocket?

A That's right.

Q Now, that's enough.

Now, you went over and conferred with Ms. Bergan and talked with her?

You have to say yes or no for the record.

A Yes.

Q Before you talked to Ms. Bergan, Officer Freeman, or even when you were talking to Sergeant King when you left the dispatch substation, when Officer

King got there did you have any report of a recent theft of any TV set in that immediate vicinity?

A No, sir.

THE COURT: Well, perhaps the officer knows what you mean by "recent report," but could you narrow that down?

MR. VELA: Yes, Judge.

Q (By Mr. Vela) Had you received, Officer Freeman, to your knowledge or Officer Ortiz's knowledge, I assume, of any theft of a TV set within the last, say, hour and a half?

A Not in that area, to my knowledge, no.

Q Do you recall -- and I'm maybe asking you to [59] sit back and consider it -- did you have any reports at all, at least from that morning, of any recent thefts of any TV sets, that you can recall?

A Well, I don't work that particular area. I worked the Capitol Hill area at that time, so I just happened to be in the vicinity at the time this transpired.

Q Okay. Fine. Now, my understanding, Officer -- correct me if I'm wrong on this, that after you talked to Ms. Bergan again, that maybe perhaps yourself and other officers checked the rest of the area, the neighborhood area?

A I helped check this immediate area, yes.

Q My understanding, from the police reports, none of the officers, including yourself, found any evidence of any burglary pertaining to the house you examined on that block of Exposition and Vine, to your own best knowledge?

A I know none, no.

★ ★ ★ ★

[61] ROGER A. COMSTOCK

called as a witness in behalf of the People, first being duly sworn, testified upon his oath as follows:

MR. HECKENBACH: Your Honor, before questioning, may I have a few exhibits marked?

THE COURT: Yes. We will go off the record.

(Whereupon, People's Exhibits B and C were marked for purposes of identification.)

DIRECT EXAMINATION

BY MR. HECKENBACH:

Q Sir, would you please state your full name and spell your last name for the record?

A Roger A. Comstock, C-o-m-s-t-o-c-k.

Q Thank you. How are you employed, sir?

A I'm a policeman for the City and County of Denver.

Q How long have you been employed by the Denver Police Department?

A 16 years.

[62] Q What is your current assignment?

A I'm assigned to the Criminal Investigation Division, Burglary and Theft Detail.

Q How long have you had that particular assignment?

A 11 years.

Q Detective Comstock, I would like to direct your attention to September 29, 1981. Did you have occasion to respond to the location of South Vine and Exposition Streets?

A Yes, I did.

Q Was that done in the City and County of Denver, State of Colorado?

A Yes, it was, and is.

Q Do you recall about what time you responded to that location?

A It was approximately 1:45 p.m.

Q What did you observe when you arrived at that location?

A Upon arrival, I observed a police car parked on the north curb of Exposition with a party seated in the back seat; Officer Freeman, Sergeant King standing outside the car.

Q Is the party that you saw in the back seat in the courtroom today?

A Yes, he is.

[63] Q For the record, please identify where he is seated and what he is wearing.

A He is seated at the Defendant's table, in a green shirt, green pants.

Q Thank you.

MR. HECKENBACH: May the record reflect the identification of the Defendant?

THE COURT: Yes, the record will so reflect.

Q (By Mr. Heckenbach) Detective Comstock, I have placed in front of you what has been marked for identification purposes as People's Exhibit B. Can you identify for us what that is?

A Yes. That's a property envelope from our property custodian's office.

Q And are you able to determine whether or not you had, at any time, anything to do with that particular envelope?

A Yes. I filled out the Property Division description on the front.

Q And does it contain -- have you examined the contents of that particular bag today?

A Yes, I have.

Q Okay. And does it contain property that you recovered?

A Property that Officer Freeman and also my [64] partner, Detective Wessels, recovered.

Q Okay. What property, if any, did Officer Freeman give to you at that time?

A A pair of brown wool-type gloves.

Q And did you place those gloves in that bag?

A Yes, I did.

* * * *

Q (By Mr. Heckenbach) Detective, I have handed to you what has been marked as People's Exhibit B-1 and B-2. Can you identify those items, sir?

A Yes. Those were the gloves handed to me by Officer Freeman at the scene of the arrest.

* * * *

[69] Q Detective Comstock, did you also transport to the custodian's office any other property from that location?

A Yes, I did.

A What property was that, sir?

A TV set and an Atari game, and a yellow shirt.

Q Where were those items when you first arrived?

A They were sitting on the ground at the bus stop, along the north curb of Exposition.

Q Okay. And did you place those into the Property Bureau?

A Yes, I did.

Q Now, later on did you have occasion to become the assigned or investigative detective to this case?

A Yes, I did.

* * * *

[70] Q And were you, at some point, informed that this case involved a burglary occurring at 791 South Vine on September 29, 1981?

A Yes, I was assigned the case the next morning.

Q Okay. And have you met the residents or the owners of that property, 791 South Vine?

A Yes, I was.

Q And what are their names?

A David and Carol Rogers.

Q At any time, sir, did you get the property -- I'm sorry -- the TV set and Atari set, did you ask either of those victims, or Mr. and Mrs. Rogers, to respond down to the Property Bureau?

A Yes, I did.

[71] Q And why did you ask them to come down?

A To positively identify the property that was being held.

Q And were they able to do that?

A Yes, they were.

Q Do you know how they were able to tell the property there was theirs?

A The burglary was discovered, and the report was made approximately seven

p.m. on 9/29. At the time the report was made, the officer was unaware that we had recovered the TV set. Mr. Rogers was able to supply the serial number to the TV set, which was listed on the offense report at that time. When I received the investigation of the offense, I looked at the report. The serial number matched the TV set we had recovered the previous day.

Q Okay. So, in other words, the property was recovered before the owners discovered the burglary?

A That's correct.

Q Okay. And did you release the TV set and the Atari game back to Mr. Rogers?

A Yes, I did. It was the only TV set they had in the house.

Q I would like to have you look at People's [72] Exhibit C, and ask if you can identify that?

A Yes, that's -- that was taken out of the property custodian's office at the time the TV set was positively identified and released to Mr. Rogers.

Q Was that -- does that fairly and accurately portray Mr. Rogers and his property?

A Yes, it does.

* * * *

MR. HECKENBACH: I have no further questions, [73] Your Honor. I would offer into evidence, People's Exhibits B, B-1, B-2, and C.

THE COURT: All right.

* * * *

[Cross-examination of witness Comstock omitted.]

[102] CAROL S. ROGERS
called as a witness in behalf of the
People, first being duly sworn,
testified upon her oath as follows:

DIRECT EXAMINATION

BY MR. HECKENBACH:

Q Ma'am, will you please state your full name and spell your last name for us?

A Carol S. Rogers, R-o-g-e-r-s.

Q Thank you. Are you related to David Rogers?

A Yes, he is my husband.

Q And where do you live, Mrs. Rogers?

A 791 South Vine.

Q About how long have you lived there?

A Since 1972.

Q Mrs. Rogers, I would like to direct your attention to September 29, 1981. Were you at home with your children during the early part of the day?

A During the morning, my little boy was at preschool.

Q Okay. How many children do you have?

A A six-year-old and a four-year-old.

Q Okay. So, who all was home with you during the morning?

[103] A No one.

Q No one?

A Okay. One was in school, one was in preschool. I'm sorry.

Q Now, along about one o'clock in the afternoon, did you leave your house?

A No, I picked up my four-year-old at preschool, and at 11:30 we went to lunch.

Q Um-hum.

A Then, I came back by the house at fifteen till 1:00.

Q Did you go inside your house?

A Yes. I had to get some babysitting co-op.

Q I'm sorry?

A I'm a babysitting co-operative, and I needed to pick up the babysitting

hours so I can pay the girl that was going to babysit my son.

Q When you went into your house at that time, where did you keep that particular item that you went in to get?

A It's in the desk drawer in the dining room.

Q Is that the same room where your TV is located?

A Yes.

Q Did you notice whether or not the TV was there, or whether it wasn't?

[104] A It was there.

Q It was there. About how long did you stay at your house?

A About five minutes. I went to the restroom, then got my cards, and I left.

Q Did you notice anything else unusual about the house?

A No.

Q Okay. You left the house at that time; right?

A At fifteen of one, to take my child to the babysitter.

Q Okay. And where did you go?

A I went to my dentist.

Q Okay. And about what time did you return home, Mrs. Rogers?

A Between 5:00 and 5:15.

Q And when you got home, did you notice anything unusual about your house?

A No. I unlocked the door and I went in, and my children were hungry. It was around suppertime, so we went right to the kitchen to get them something to eat, and I noticed that the radio was pulled out from the wall -- that [105] was in the kitchen -- and the cord was wrapped around the handle. So, that was the first thing I observed. I thought maybe my husband had come home, thought maybe he would like to take the radio someplace.

So, I turned around, my little girl said, "Look, there's the microwave. It's not where it's supposed to be. It's pulled out from the wall." And at that point, I started getting a little scared. I didn't know if someone was in the house or what was going on, so I went back to my little boy's room and I noticed the window fan was on the floor. So then, I thought, well, I still wondered if someone was in the house. I didn't know what to do since the children were there. So, I came back through my bedroom, back to the dining room where my children were, and I told them, "Just stay in the dining room."

Then, I noticed that the TV was gone and the Atari.

Q Did you call the police?

A I called the police the first thing, right after I noticed the TV and

Atari was gone. Then, I called my husband's office to see if he was there.

Q Did he come home?

A He had already left.

Q Did you meet him out in front?

A Yes.

[106] Q You say when you came home from the dentist around five o'clock, whenever it was, you say you unlocked the front door?

A Yes.

Q It was still locked?

A Um-hum.

Q Was there anything else in the house, as far as possible entryways, like windows or doors, that you could tell had been disturbed?

A No, just where the window -- where the window fan was -- the window fan was knocked off the window and the window was still opened.

Q Was that window kept open so that the window fan would be effective?

A Yes. We always used the window fan at night, but our door always locks when you shut it. It automatically locks.

Q Do you need a key to open it from the outside?

A Yes.

Q Do you need a key to open it from the inside?

A No.

Q Would it still automatically lock?

A Yes.

Q On the way out?

A Yes, on the way out.

[107] Q Mrs. Rogers, on that day, did you give anyone permission to enter your home or to steal your TV and Atari set?

A No.

Q Have you ever seen the gentleman to my right here, dressed in green?

A No.

Q Prior to that particular day, you did see him at the preliminary hearing; right?

A Right.

Q Okay. But prior to that preliminary hearing, had you ever seen him?

A No.

Q Have you ever seen him in your neighborhood at all?

A No.

Q Did you give him permission to enter your house?

A No.

MR. HECKENBACH: I have no further questions.

* * * *

MR. HECKENBACH: Your Honor, the People rest.

THE COURT: The People have rested.
[Cross-examination by witness Rogers omitted.]

SUPREME COURT OF THE UNITED STATES

No. 82-1711

Colorado,

Petitioner,

v.

Fidel Quintero

ORDER ALLOWING CERTIORARI.

Filed June 27, 1983.

The petitioner herein for a writ of certiorari to the Supreme Court of the State of Colorado is granted.